

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

3 WESTERN DIVISION

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5 MARK HOOP, et al., : CIVIL ACTION 1:00cv869
6 :
6 Plaintiff, : Cincinnati, Ohio
7 : Wednesday, Feb. 11, 2004
7 -vs- : Day 5 of trial
8 :
8 JEFFREY HOOP, et al., : Judge's statement after verdict
9 : Defendants' Motion for
10 Defendant. : return of equipment

11 - - -

12 EXCERPTS OF PROCEEDINGS
13 BEFORE THE HONORABLE SUSAN J. DLOTT, JUDGE

14 - - -

14 For the Plaintiffs: Alfred Mangels, Esq.
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22 Courtroom Deputy: Steve Snyder
23 Court Reporter: Betty Schwab
24
25

1 (After the verdict.)

2 * * *

3 THE COURT: Ladies and gentlemen, before
4 discharging you as jurors, since you've completed your
5 duties, I have a couple of comments to make. I have a
6 standard speech I usually give, but this jury has really
7 gone above and beyond what our normal juries do.

8 What I usually talk about is the fact that we
9 have three branches of government, and, for the Executive
10 Branch, you vote for the president, and that's the end of
11 that. For the Legislative Branch, you vote for your
12 congressman, and that's sort of the only way that you can
13 participate in that. But in the Judicial system, your
14 being jurors really goes to the heart of this system.
15 Without you doing this job, we could not function. It's
16 not always perfect justice, but it's the closest thing
17 we've come to in hundreds of years, I think.

18 I have a standard thing here where I always say
19 we thank you for having performed your duties in exemplary
20 fashion, but I must tell you this jury was one of the most
21 attentive, hard working juries I have ever seen. And I am
22 eternally grateful to you, as are the parties and everyone
23 connected with the Court.

24 You are excused; however, if you have got just a
25 moment -- I know it's late -- but I'd just like to thank

1 you in person in the robing room if you would wait for me
2 for just a second.

3 (Jury excused from the courtroom at 7:20 p.m.)

4 * * *

5 (7:45 p.m.)

6 THE COURT: Ms. House, I understand you have a
7 motion to make.

8 MS. HOUSE: Yes, Your Honor. I wanted to make a
9 motion to allow my clients to pick up their equipment
10 immediately. I wanted to see how we needed to go about
11 making arrangements for that.

12 THE COURT: By "equipment" you mean the dies?

13 MS. HOUSE: I mean the die, including without
14 limitation the mold shoes and insert steels.

15 THE COURT: I'm having trouble hearing you.

16 MS. HOUSE: The die, including without limitation
17 the mold shoes and insert steels, the bump die, the
18 multiple-station fixture, the contoured stamping die.

19 I don't think I understood that the two-station
20 trim die was ever built. So, other than that, we'll just
21 ask for all eagle-design fairing guards in the possession
22 of Mark or Lisa Hoop.

23 And my clients just want me to ask about what
24 would be happening with Joint Exhibit 28 that has the
25 eagle-design fairing guards on it.

1 THE COURT: Is that the --

2 MS. HOUSE: The fairing.

3 THE COURT: Whose exhibit was it?

4 MS. HOUSE: That was Mark Hoop's exhibit.

5 THE COURT: I guess we've got to wait and see if
6 there is an appeal, don't we, Steve?

7 We usually have to hold it if there's an appeal.

8 MS. HOUSE: I thought that would probably be the
9 answer, but they wanted me to ask, so I just thought I
10 would.

11 THE COURT: Mr. Mangels?

12 MR. MANGELS: I think the motion is premature,
13 Your Honor. We're going to be filing a motion for judgment
14 as a matter of law and for a new trial, so the matter has
15 not been finally determined yet, and I think it's premature
16 to require me to turn over the property at this particular
17 time, Your Honor.

18 MS. HOUSE: Judge, if they're not inclined to
19 turn over the equipment at this particular time, then we
20 will request that they post a \$49,500 cash bond to secure
21 the equipment, because we fear that it may be sabotaged or
22 damaged or that anything might happen in the interim.

23 THE COURT: All right. The Court will order a
24 bond. If you don't -- I mean, you can turn over the
25 equipment or the Court will order a bond.

1 MR. MANGELS: Could we have some time, Your
2 Honor, to digest all this?

3 MS. HOUSE: Judge, my clients are anxious to get
4 the equipment. Jeff's here from Florida. He wants to take
5 the equipment back to Florida with him. He's been here for
6 a long time away from his son whose birthday is coming up
7 soon.

8 THE COURT: If they post a bond, though.

9 MS. HOUSE: Right. I understand that. If they
10 assure us they're posting a bond, that's no problem.

11 THE COURT: Yes. I think, in order to protect
12 the property, I would have to have an answer if you're
13 going to post the bond or turn over the property.

14 MR. MAGEE: Your Honor, can we just have a minute
15 so I can talk with them?

16 THE COURT: Sure.

17 (Pause in proceedings while Mr. Magee and
18 Mr. Mangels and their clients leave the room and return.)

19 THE COURT: Okay.

20 MR. MAGEE: Your Honor, we're willing to
21 surrender the die. I think our issue is here this motion,
22 I'm assuming, as based on the verdict is the breach of
23 contract claim. We don't have a writing. We never had a
24 writing here. That's taking the jury's verdict that they
25 breached the contract, what's involved herein. I mean,

1 obviously, the die.

2 THE COURT: Right.

3 MR. MAGEE: But it's never been defined what
4 everything else is. We'll turn over the die. That's fine.
5 But they're asking for things that --

6 (Construction noise.)

7 THE COURT: Wait. Why don't you come up here?

8 Have you guys got a cell phone? Maybe call Rick
9 and tell them to stop it again.

10 MS. HOUSE: Judge, I don't have the exhibits in
11 front of me, but basically I looked at Mark Hoop's invoice,
12 which was Joint Exhibit 22 and Joint Exhibit 23, which sets
13 forth the tooling costs, and also JX 35, which was the
14 manufacturing agreement. And basically, as the Court will
15 note, Mark's document -- I'm sorry. It's PX 23, not JX
16 23 -- the total tooling cost was \$49,500, and the --

17 THE COURT: The jury awarded -- I'm not quite
18 sure -- 51.

19 MS. HOUSE: The jury, well, actually what we were
20 going by was the jury awarded Mark the \$36,000, which was
21 this figure here, and the additional \$13,000 that had
22 already been paid would add up to \$49,000. And there was a
23 lot of question throughout whether it was \$36,000 or 36
24 five. So the 500 is, you know -- so basically it sounded
25 like to me that the jury was including all the equipment

1 when the jury made that ruling.

2 MR. MANGELS: Your Honor, Jeff Hoop testified
3 that, when mention was made of this additional equipment,
4 he had testified, well, we never asked for that; we just
5 asked them to make the die. So the property involved
6 should really be only the die itself and none of this other
7 equipment.

8 MS. HOUSE: Another problem is, of course, that
9 this equipment is used to manufacture this product.

10 THE COURT: Right. It would be useless.

11 MR. MANGELS: No, it would not be useless, Your
12 Honor. It is a matter of not being comprehended by the
13 parties at the time this agreement had been entered into.
14 They wanted to have him prove that he could mold it, and,
15 in order to mold it, he would have to make a die, but, in
16 order to prove it moldable, he would not have made a
17 secondary handling tool. He did that for his own
18 invention. Jeff Hoop testified we never asked him to do
19 that. That's testimony in the record. And now they're
20 asking these folks for things that they say, well, we never
21 asked them to make those.

22 MS. HOUSE: Well, Judge, the thing I got from the
23 testimony was that the multiple-station fixture was
24 specifically to hold those eagle-design fairing guards
25 while the tabs are ground off them. I think that that is

1 of this, the subsequent dies, everything else, I mean
2 that's just absurd.

3 MS. HOUSE: Judge, in the conversion section, if
4 you remember reading from the jury instructions, it
5 specifically says the die and the equipment necessary to
6 manufacture the eagle fairing related equipment to
7 manufacture the eagle fairing guards. And that was defined
8 as the equipment, and the jury did find that Mark Hoop had
9 converted the personal property of my client.

10 THE COURT: I'm going to order that either all of
11 the equipment be turned over or that you post a bond in the
12 amount of 49 five immediately.

13 MR. MAGEE: I would just -- okay. I understand
14 your ruling. I'm not going to argue.

15 MS. HOUSE: May we get details on where we can
16 pick up the equipment?

17 MR. MAGEE: We may post the bond. We need to
18 talk a little more, Your Honor.

19 THE COURT: The bond needs to be posted tomorrow
20 by the close of business. By 5 p.m. tomorrow, either the
21 equipment -- you need to make arrangements with --

22 MS. HOUSE: Could the equipment all be at
23 Accro-Cast and we could just pick it all up there, since we
24 know the die is there?

25 THE COURT: Do they know how to get ahold of you?

1 equipment that has been used to infringe this patent, and I
2 think it's equipment that my clients are entitled to.

3 The contoured stamping die is the equipment that
4 is used to put the foam tape on the back of the
5 eagle-design fairing guards. Again, that is equipment that
6 Mark Hoop used to infringe on the patent, and I believe my
7 clients are entitled to it.

8 The two-station trim die, I understand, doesn't
9 exist. Is that correct?

10 MR. MAGEE: That's my understanding.

11 MR. MANGELS: No, it doesn't exist.

12 MS. HOUSE: And that's actually the major pieces
13 of property listed on here valued at \$9,000. The other two
14 are only listed as the multiple-station fixture, 3,000, and
15 the contoured stamping die, 15 hundred.

16 Of course there is a bump die which you heard
17 testimony about, and that is, the original die, it was
18 necessary to bump the part for the motor cycles 1996 and
19 above and make them fit on the fairings after that date.
20 So certainly we'll be requesting that.

21 MR. MAGEE: Your Honor, my understanding what the
22 jury came back with is a breach of contract claim. They
23 paid \$13,000 for a die. That's what they're saying. We
24 didn't produce the die, according to the jury. And they
25 performed their end of the bargain, the 24,000. The rest

1 MS. HOUSE: Yes.

2 THE COURT: You need to make arrangements with
3 the defendants to turn the equipment over tomorrow or post
4 a bond in the amount of \$49,500 with the clerk of the
5 court's office by 5 p.m. tomorrow.

6 Anything further?

7 MS. HOUSE: Nothing further, Your Honor. Thank
8 you very much.

9 COURT ADJOURNED AT 7:50 P.M.

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11

12 C E R T I F I C A T E

13 I, Betty J. Schwab, the undersigned, do
14 hereby certify that the foregoing is a correct
15 transcript from the record of the proceedings in
16 the above-entitled matter.

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Betty J. Schwab
BETTY J. SCHWAB, RPR
Official Reporter